

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.22051 of 2014

and

W.P.No.5313 of 2015

and

MP.NOS.1 and 1 OF 2015 & 2 and 2 OF 2015

W.P.No.22051 of 2014

C.Madheswari ... Petitioner

- Vs -

1. District Collector,
Dharmapuri District,
Dharmapuri.

2. Divisional Engineer,
Highways Department, (S&M),
Dharmapuri.

3. Assistant Divisional Engineer,
Highways Department, (S&M),
Dharmapuri.

4. The Assistant Engineer,
Highways Department, (S&M),
Dharmapuri. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records of the 4th respondent in Ku.No.5/2014/P.A./ dated 25.07.2014 and quash the same.

For Petitioner	:	Mr.M.Selvam
For Respondents	:	Mr.S.Diwakar
		AGP

W.P.No.5313 of 2015

C.Madheswari

... Petitioner

- Vs -

1. District Collector,
Dharmapuri District,
Dharmapuri.
2. The Managing Director
Tamil Nadu co-operative Milk Producers Federation
Aavin Illam, Madhavaram Milk Colony,
Madhavaram (Post) Chennai.
- 3.The General Manager,
Dharmapuri District Co-operative Milk Producers Union,
Dharmapuri. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the third respondent dated 25.08.2014 and made in Na.Ka.No.1211/Sales/ 2/2014 and quash the same and consequently direct the respondents to renew licence granted to petitioner to sell Aavin Milk and Milk products.

For Petitioner in WPs : Mr.M.Selvam
For Respondents in
WP.NO.5313/15 : Mr.S.Diwakar (R1)
AGP
Mr.T.K.Ashok Kumar (R2 and R3)
For Respondents in
WP.NO.22051/15 : Mr.S.Diwakar Additional
Government Pleader

C O M M O N O R D E R

Heard both sides.

2. The petitioner is a licensee of Aavin which in turn is the licensee of Highways Department. The permit given to the Aavin is temporary and is liable to be cancelled at any point of time. By the proceedings dated 26.02.2013, the Divisional Engineer Highways Department gave a letter to the Managing Director, Aavin Illam cancelling the permission granted and the Aavin booth will have to be removed resultantly.

3. By the proceedings dated 25.07.2014, the Assistant Executive Engineer has asked the petitioner to remove the booth on the ground that it causes health hazards. Challenging the same, the Writ Petition in W.P.No.22051 of 2014 has been filed and an interim order of stay has been obtained. Thereafter, another order dated 25.08.2014 was passed by the General Manager, Dharmapuri District Co-operative Milk Producers Union, asking the petitioner to remove the booth as the licence issued was cancelled by the HighWays Department. Challenging the said order dated 25.08.2014, the Writ Petition in W.P.No.5313 of 2015 has been filed.

4. Learned counsel for the petitioner has submitted that the petitioner has been carrying on business without any hindrance for so many years and cancelling the licence unilaterally is against the principles of Natural Justice and the cancellation of permit can be done only after issuing proper notice and after due enquiry.

5. The learned counsels for the respondents submitted that all other encroachments in front of the Medical College have been removed except the petitioner. Therefore, there is no selective discrimination and hence these Writ petitions are liable to be dismissed.

6. This Court is not inclined to accept the submissions made by the learned counsel for the petitioner. The licence of the petitioner has been effectively cancelled by an order dated 26.02.2013, which was a communication between the HighWays Department and the Aavin. The petitioner, being in permissive possession of Aavin, cannot have vested right to continue, being the licensee of Aavin, which in turn is the licensee of the High Ways Department. The communication of the Highways Department has attained finality meaning thereby there is no authority for the petitioner in continuing with the possession. Reasons have also been assigned for the decision to remove the booth. Hence, there is no violation of the principles of Natural justice. The sale of products to the petitioner by Aavin has also been stopped. There is also a public interest involved in the decision made. Hence, these Writ Petitions are dismissed. However, considering the difficulties expressed by the learned counsel for the petitioner and taking note of the fact that the petitioner is a widow, a further period of six weeks from the date of this order is given to vacate the booth. In the meanwhile, the respondents concerned can consider the request of the petitioner for alternative allotment. Consequently Connected MP's are closed.

Sd/-

Asst.Registrar (CSII)

/true copy/

Sub Asst. Registrar

To

1. District Collector,
Dharmapuri District,
Dharmapuri.

2. Divisional Engineer,
Highways Department, (S&M),
Dharmapuri.

3. Assistant Divisional Engineer,
Highways Department, (S&M),
Dharmapuri.

4. The Assistant Engineer,
Highways Department, (S&M),
Dharmapuri.

5. The Managing Director
Tamil Nadu co-operative Milk Producers Federation
Aavin Illam, Madhavaram Milk Colony,
Madhavaram (Post) Chennai.

6. The General Manager,
Dharmapuri District Co-operative Milk Producers Union,
Dharmapuri.

+1 cc to Government Pleader sr.50510

W.P.No.22051 of 2014
and
W.P.No.5313 of 2015

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